

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JOHN E. ERICKSON; SHELLEY A.  
ERICKSON; SHELLEY'S TOTAL  
BODY WORKS DAY SPA/SHELLEY'S  
SUNTAN PARLOR,

Plaintiffs,

v.

LONG BEACH MORTGAGE CO.;  
WASHINGTON MUTUAL BANK;  
CHASE BANK; DEUTSCHE BANK  
NATIONAL TRUST COMPANY,

Defendants.

CASE NO. C10-1423 MJP

ORDER DENYING PLAINTIFFS'  
MOTION TO VACATE  
JUDGMENT AND STAY  
AUCTION

This matter is before the Court on Plaintiff's motion to vacate the judgment and stay the auction of their home. (Dkt. No. 102.) Having considered the motion and supporting documents, (Dkt. Nos. 103–107), the Court DENIES the motion.

**Background**

Plaintiffs commenced this case in 2010 seeking relief on various theories after their application for a loan modification was denied by Defendant JPMorgan Chase Bank, N.A. (Dkt.

No. 91 at 2–4.) Plaintiffs had used their home to secure the loan. The Court granted Defendants’ motion for summary judgment and dismissed Plaintiffs’ claims in 2011. (*Id.*) The Court also denied Plaintiffs’ motion for reconsideration. (Dkt. No. 94.) Plaintiffs appealed and the Ninth Circuit affirmed in 2012. (Dkt. No. 100.) Plaintiffs now move the Court to vacate the judgment and for a stay of the auction of their home, scheduled for December 3, 2021. (Dkt. No. 102.) Defendants have not filed a response, but Plaintiffs, who are *pro se*, have filed hundreds of additional pages. (*See* Dkt. Nos. 103–07).

## Discussion

### I. Motion to Vacate

Under Rule 60, the Court may relieve a party from a final judgment, order, or proceeding for any of the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b). A motion under Rule 60(b) “must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.” Fed. R. Civ. P. 60(c)(1). There is no time limit on a Rule 60(b) motion for reasons (4), (5), or (6) so long as it is made “within a reasonable time.” *See Meadows v.*

1 Dominican Republic, 817 F.2d 517, 521 (9th Cir. 1987). In addition, Rule 60 does not limit a  
2 court's power to "set aside a judgment for fraud on the court." Fed. R. Civ. P. 60(d).

3 Plaintiffs have provided no basis for the Court to set aside the judgment in this decade-  
4 old case. Plaintiffs' first argument appears to be that the judgment is void because the Court  
5 lacked jurisdiction to issue its decision because Plaintiffs failed to serve the proper defendants.  
6 (See Dkt. No. 102 at 7–12.) It is true that a judgment against a defendant who was never served  
7 is void because the court would lack personal jurisdiction over the defendant. See Thomas P.  
8 Gonzalez Corp. v. Consejo Nacional De Produccion De Costa Rica, 614 F.2d 1247 (9th Cir.  
9 1980). However, that principle is not relevant here because the Court never issued a judgment  
10 against a defendant; rather, it dismissed Plaintiff's claims. Plaintiffs' argument that the judgment  
11 is void for lack of service is without merit because it is based on a misunderstanding of the law.

12 Plaintiffs also argue that the judgment is void because it was the result of fraud on the  
13 Court. Specifically, Plaintiffs contend that JP Morgan Chase Bank and Deutsche Bank National  
14 Trust Co. have no interest in their mortgage, which they say remains in the hands of Long Beach  
15 Mortgage Co., and that the Court was misled into believing otherwise by counsel for Defendants.  
16 (See Dkt. No. 102 at 13–30.)

17 It appears the portion of the Court's prior order with which Plaintiffs are most concerned  
18 relates to their claim for declaratory relief. (See Dkt. No. 91 at 5–6.) That claim depended on  
19 the theory that Defendants lacked any interest in the loan because they were not the original  
20 creditors. The Court dismissed the claim because courts have repeatedly rejected such theories  
21 and Plaintiffs failed to credibly challenge Defendants' evidence showing ownership of the note.  
22 Plaintiffs appear to believe now that, if they can only reverse this portion of the Court's prior  
23 order, they could prevent the sale from going forward.

1 Plaintiffs have not shown that the Court should vacate the judgment or this portion of its  
2 decision because of fraud or voidness. Although they have filed hundreds of pages of  
3 documents, the Court is unable to identify any support for this theory. Plaintiffs have not shown  
4 that Defendants' representation was fraudulent or that some other entity owns the note. They do  
5 not provide any newly discovered evidence that could support such a belated reversal or any  
6 explanation for why they could not have made a motion to vacate within a reasonable time. But  
7 even if they did, the judgment here was merely one dismissing their claims. This Court did not  
8 decide whether Plaintiffs were in default or whether Defendants could foreclose on them.  
9 Vacating the judgment would merely reinstate Plaintiffs' claims in this action and would have no  
10 effect on the scheduled auction.

## 11 **II. Motion to Stay**

12 Plaintiffs also move to stay the auction of their home on December 3. Plaintiffs are filing  
13 papers in the wrong case. The order authorizing the auction was entered in a proceeding in King  
14 County Superior Court. (See Dkt. No. 102, Exhibits Part 1 at 124 (sheriff's notice in Deutsche  
15 Bank National Trust Company, as Trustee, in Trust for Registered Holders of Long Beach  
16 Mortgage Loan Trust 2006-4 v. John E. Erickson et al., No. 14-2-00426-5).) The underlying  
17 judgment against Plaintiffs that the sale of their home depends on was not issued in this case.  
18 Even if the Court could vacate the judgment here, it would have no authority to stay the auction  
19 because the underlying judgment would still be in effect. That judgment was issued by a  
20 Washington State court and this Court has no authority to review state-court judgments. See  
21 Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 291 (2005). Plaintiffs might  
22 consider seeking relief in that proceeding.  
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1 Plaintiffs might also consider obtaining legal advice or counsel through the Northwest  
2 Justice Project (by calling 211 or 800-621-4636 on weekdays, 8:00 a.m. to 6:00 p.m., or via  
3 <https://nwjustice.org/get-legal-help> or [www.washingtonlawhelp.org](http://www.washingtonlawhelp.org)) or the King County Bar  
4 Association's attorney referral line (206-267-7010).

5 Plaintiffs' motion is DENIED. The clerk is ordered to provide copies of this order to all  
6 parties and counsel.

7 Dated December 1, 2021.

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9 Marsha J. Pechman  
10 United States Senior District Judge  
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